Text of First Report on Prohibition Inquiry

WASHINGTON (AP)—The following is the text of the preliminary report on the observance and enforcement of prohibition of the National Commission on Law Enforcement and Observance:

PRELIMINARY REPORT ON OBSERVANCE AND ENFORCEMENT OF PROHIBITION.

Ever since the organization of this commission on May 28, 1929, it has been giving careful consideration, among other things, to the question of observance and enforcement of the Eighteenth Amendment and the national prohibition act. The problems presented have been numerous and difficult.

It was urged upon us from certain sources that we proceed at once to hold public hearings on this subject, but we conceived it to be more useful to make a careful study of the whole question, securing information from the responsible officers of government and from printed reports, as well as from hearings before committees of Congress, before embarking upon public hearings.

While we are not ready to make a final report on the subject, we have reached certain conclusions which we are transmitting to you with this communication. The extent and complexity of the problem perhaps may be strikingly presented by reference to a few outstanding facts.

SCOPE AND SIZE OF THE PROBLEM.

As to observance: It is impossible wholly to set off observance of the prohibition act from the large question of the views and habits of the American people with respect to private judgment as to statutes and regulations affecting their conduct. To reach conclusions of any value we must go into deep questions of public opinion and the criminal law. We must look into the several factors in the attitude of the people, both generally and in particular localities, toward laws in general and toward specific regulations. We must note the attitude of the pioneer toward such things.

We must bear in mind the Puritan's objection to administration, the Whig tradition of a "right of revolution," the conception of natural rights, classical in our policy, the democratic tradition of individual participation in sovereignty, the attitude of the business world toward local regulation of enterprise, the clash of organized interests and opinions in a diversified community, and the divergences of attitude in different sections of the country and as between different groups in the same locality.

We must not forget the many historical examples of large-scale public disregard of laws in our past. To give proper weight to these things, in connection with the social and economic effects of the prohibition law, is not a matter of a few months.

Cites Arrests of 80,000 in Year

As to enforcement, there are no reliable figures to show the size of the problem. But the reported arrest in the last fiscal year of upwards of 80,000 persons from every part of continental United States indicates a staggering number of what might be called focal points of infection. To these must be added the points of possible contact from without, along 3,700 miles of land boundaries, substantially 3,000 miles of frontage on the Great Lakes and connecting rivers (excluding Lake Michigan), and almost 12,000 miles of Atlantic, Gulf and Pacific shore line. Thus, there are about 18,700 miles of mainland of the continental United States at every point of which infection is possible.

There are no satisfactory estimates of the number of roads into the United States from Mexico and Canada. The number of smuggling roads from Canada is reported as at least 1,000, and on the Mexican border there are entrances into the United States at most points along a boundary of 1,744 miles.

To deal with an enforcement problem of this size and spread, the Federal government can draw only on a portion of the personnel of three federal services, whose staffs aggregate about 23,000. Approximately one-tenth of this number is in the investigative section of the prohibition unit. Of the remaining 20,000, only a small proportion of the personnel is available for actual preventive and investigative work. The remainder is engaged in work far different from prohibition.

These figures speak for themselves.

ADMINISTRATIVE DIFFICULTIES.

A frequent complaint is that the federal government is prosecuting small cases and not getting at those responsible for the large supplies of illegal liquor. To get at the smugglers, the wholesale distributers and those who manufacture and divert on a large scale it is necessary to have either an integration of the forces working at the supply and distribution ends, or a close working relation between the two forces.

With respect to both liquor and narcotics it is frequently stated by enforcement officials and those who study phases of the problem that the the federal officials who deal with local or retail distribution upset many an investigation which might lead to the sources of supply, and on the other hand investigators who are dealing with sources are frequently ineffectual in getting at persons who control the sources.

To adjust the machinery of federal administration, as it had grown up for other purposes, to this huge problem of enforcement of prohibition is not easy, and will require much further study. Unification, centralization of responsibility and means of insuring cooperation between federal and state agencies are things to which we must come, quite apart from the exigencies of enforcement of prohibition, but which cannot be achieved overnight.

LEGAL DIFFICULTIES AND PROPOSED REMEDIES.

When we come to the legal difficulties in enforcement, it is possible to speak with much more assurance as to what may be done at once by way of improvement.

Pending study of the whole subject there are certain features of federal enforcement of the law as it stands with respect to which the testimony of judges, district attorneys, and enforcement officers is general and substantially unanimous. If on no other grounds than to give the law a fair trial, there are obvious and uncontroverted difficulties, abundantly pointed out by experience, which may, and, as we think, should be met so as to make enforcement more effective.

Summarily stated, these difficulties are due to (one) the division of enforcement between the Treasury Department and the Department of Justice, (two) the disordered condition of federal legislation involved in enforcement, (three) the possibilities of evading or defeating injunction proceedings, commonly known as padlock injunctions, by means of transfers and concealments of persons interested in property used for manufacture and sale of illicit liquor, and (four) the congestion of petty prosecutions in the Federal Court, requiring great delays, interfering seriously with general business, and leading to wholesale disposition of accumulated causes under circumstances impairing the dignity of and injuring respect for those tribunals.

Without prejudice to any ultimate conclusions, we think that in the interest of promoting observance of and respect for law, the national prohibition law may well be strengthened and its effectiveness increased in these important particulars.

(A) Transfer of investigation and preparation of cases to the Department of Justice.

There is very general agreement among those who have had to do with enforcement of prohibition that the whole task of enforcement through the courts as distinguished from the granting of permits and administration of regulations as to the legitimate use of alcohol or of liquors, should be concentrated in the Department of Justice. It is an anomaly that the cases are investigated and prepared by agencies entirely disconnected with and not answerable to those which are to prosecute them. All experience of administration shows the importance of concentration rather than diffusion of responsibility.

If prosecution, the legal side of enforcement, is partitioned between two distinct agencies, the diffused, ill-defined, non-located responsibility is sure in the long run to be an obstacle to efficiency. No doubt, in certain special situations, where technical knowledge of a special type is involved and where the number of prosecutions each year is very small, it is consistent with a high degree of efficiency to have these few cases investigated and prepared by some body of experienced men in some other department and turned over to the Department of Justice for trial. But where the volume is so enormous and the circumstances are so varied as in liquor prosecutions, this is not expedient.

Single Head Required For Effectiveness

To dispose of such a mass of cases satisfactorily, there must be a well-organized coordination of investigation and prosecution, which can only function effectively when under a single head, with responsibility definitely placed, so that there can be no falling down between two distinct bureaus and no lapsing at either point into a perfunctory routine.

There must be careful study of how to separate the permit-granting work of the Treasury Department, which belongs there, from the work of investigation and prosecution, which should all be done in the Department of Justice. But the principle of transfer of the latter to the Department of Justice is, we think, clear.

(B) Codification of Federal Legislation Applicable to Enforcement of Prohibition.

Enforcement of prohibition involves resort to more than twenty-five statutes, enacted at various times during forty years, many of them much antedating the Eighteenth Amendment. As they stand they are in form disconnected, unwieldy and in much need of coordination and adjustment to each other. It has been urged upon us from many parts of the country, by those charged with administering them, and we find it true on examining them, that they are much in need of being put in order, revised, and simplified.

We recommend that all Federal legislation applicable to the enforcement of prohibition be revised and digested with a view of making it a unified whole in the form of a simpler, better ordered and hence more workable code. In our judgment this will make for much greater efficiency.

As things are it is sometimes far from easy for those charged with enforcement to find all the law bearing on their powers. Such things are all to the advantage of the commercialized law-breaker who commands excellent advice on all points which, at the crisis of action, the enforcement officer may have to look up hurriedly for himself. We recommend a codification of the laws on this subject as an important step toward better enforcement.

(C)—Provision for making so-called padlock injunctions more effective.

Long before the National Prohibition act, it had been found that the jurisdiction of courts of equity to abate nuisances could be made a most effective way of dealing with many forms of vice. Nearly two generations ago this jurisdiction was applied to violations of state liquor laws, and it was later applied with good results to violations of laws against prostitution. The national prohibition law took advantage of this experience and provided for injunctions in causes where property was habitually used in connection with violations of that law.

These provisions are well conceived and are capable of doing much toward making the law effective in action. But means of evading them have been discovered in certain limitations of procedure growing out of the need of serving process upon the persons interested in the property. By conveying some small fraction of the title to a non-resident, or by resident owners, landlords, or tenants concealing themselves and evading the service of process, such proceedings are increasingly rendered nugatory. We are advised that open, persistent, and extensive violators of the law have been enabled to escape so-called padlocking of their property in this way.

"Simple Amendment" As Corrective

We think this grave defect may be met by a simple amendment adding to Section 22, Title II of the National Prohibition Law a provision that if in a proceeding under that section it is made to appear to the court that any person unknown has or claims an interest in the property or some part of it, which would be affected by the order prayed for, it may order that such person be made a party by designating him as unknown owner or claimant of some interest in the property described.

It should go on to provide that such person and any defendant who is absent from the jurisdiction or whom, whether within or without the jurisdiction, it is impracticable to serve otherwise, or who is shown to the satisfaction of the court to be concealing himself for the purpose of evading service of process or of any order of the court, may be served in accordance with the provisions of Section 57 of the judicial code.

The use of injunction proceedings as a means of enforcement is so important that this provision for reaching unknown claimants, non-residents and residents who conceal themselves to evade service of process would add very greatly to the efficacy of the statute. It contains nothing which is not already done in the states generally when private claims to property are concerned.

(D) Provisions for relieving congestion in the Federal courts.

From various parts of the country come complaints of congestion of the Federal courts due to the large volume of petty prosecutions under the national prohibition act. Obviously, these prosecutions must go on. It would not do to create an impression that minor infractions are to be ignored.

As things are, however, the congestion of prosecutions in the Federal courts for minor infractions, caused by the necessity of proceeding by indictment in all cases, except for maintenance of a nuisance or for unlawful possession, is a serious handicap to dealing vigorously with major infractions and makes handling of the minor infractions perfunctory. It has done much to create a feeling in some localities that the law cannot be enforced. In our opinion, the delays and opportunities for escape from punishment thus occasioned may be and should be obviated.

Three methods to this end have been suggested: First, to increase the number of Federal judges; second, to create inferior Federal courts, or, as it has been put, Federal police courts, for such cases, and third, to utilize the present machinery of the courts, meeting the causes of delay and congestion by a simpler procedure for petty cases.

There are constituttional questions to be considered in connection with both the second and the third of these proposals. The first does not involve any constitutional difficulties, but it leaves the cumbersome procedure by indictment, wholly inappropriate to minor infractions, in full force and multiplies the apparatus designed for great cases in order to deal with small ones. The objections to this method are palpable, and it should not be adopted if the situation may be met in some other way.

Objections to Multiplying Courts.

So with the second. It involves some of the constitutional questions which must give us pause in connection with the third. But, what is more to be thought of, there are serious objections to multiplying courts. If it is possible to deal with this matter adequately with the existing machinery of the federal system, it should be done. We think such a solution entirely possible and in the right line of progress, not merely in the enforcement of the national prohibition act but of all federal legislation.

Under the Fifth Amendment, no one shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury. As construed by the Supreme Court, "infamous crime" means one punishable by imprisonment in a penitentiary, or for more than one year, or for any period if at hard labor. Hence, where imprisonment is to be in jail, is not to exceed six months, and is not to be at hard labor, the crime is not infamous. It is only where there is a possibility of imprisonment in the penitentiary, or for more than a year, or at hard labor, that an indictment is required.

The Jones law has expressly recognized a class of "casual or slight violations." A statute providing that in prosecutions under Title II of the national prohibition law the district attorney may, in case of "casual or slight violations," prosecute by complaint or information, and in such cases, when so prosecuted, the penalty for each offense should be a fine not to exceed $500 or imprisonment in jail without hard labor, not to exceed six months, or both, would obviate the long delay, unnecessary expense and needless keeping in session of grand juries, which are demanded by the present state of the law.

We think also that it would be expedient for Congress to define the term "casual or slight violations." Speedy convictions and certain imposition of penalties are important considerations, and are more likely to be efficacious than threats of severe punishment rendered nugatory by congested dockets overpassing any possibilities of trial in the manner constitutionally appointed for crimes of such magnitude. But this suggestion, made on general considerations applicable to all criminal laws, and out of abundant caution, may not be a vital part of the plan.

Next, to simplify the mode of prosecution of petty cases, we must consider the matter of pleas of guilty and of trials. As the law is every offender must be indicted, must await indictment before he can plead guilty, even if ready to do so at once, and his case must, if he pleads not guilty, await its turn on the calendar, obstructing, if it is a petty case, the disposition of important cases. The mere accumulated number of these petty prosecutions awaiting trial has become a source of embarrassment in many federal courts.

Section 3 of Article III. of the Constitution requires trial of all "crimes" to be by jury. The Sixth Amendment provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed." It has been held that "crimes" in this connection does not refer to petty offenses.

In view of the general holding of state courts on analogous provisions and of the concessions and distinctions made by the Supreme Court of the United States in the leading case of Callen V. Wilson, 127 U. S. 540, 355, 557, we think it is possible to provide for a hearing in the United States District Court before a magistrate provided trial by jury in that court is preserved to the accused. But we see no need of setting up special federal magistrates. It would seem entirely feasible to make use of the existing system of United States commissioners.

Other Methods of Simplification

It could be provided that in case the accused, prosecuted by complaint or information, pleads guilty, such plea may be reported by the commissioner to the court and judgment of conviction rendered and sentence imposed by the court. Then it could be provided that in case the accused so prosecuted pleads not guilty to the court, and the court on examination of his findings render judgment of acquittal or conviction as the case may be, and in case of conviction is recommended by the commissioner, the accused may within three days after filing of the commissioner's report, except in writing to the report and demand trial by jury.

Finally, it could be provided that in such case the district attorney may elect whether to go to trial on the complaint or information, or to submit the case to the grand jury, and that in case the grand jury indicts the case shall then proceed upon the indictment.

The Jones law was enacted to make enforcement more efficacious in two ways: (a)By providing for more severe penalties in the discretion of the court; (b)By making available the collateral consequences of a felony, such, for example, as the rules of law applicable to prevention of a felony and the capture of felons. This was done by making every violation of the national prohibition act a potential felony.

The foregoing suggestions aim at preserving this feature of the existing law. Up to the time when the district attorney elects how to prosecute there is a potential felony. In other words, all the possibilities in the way of arrest and prevention which obtain under the existing law are conserved. But the intention is to make it possible in case of "casual or slight violations" (language of the Jones law) to prosecute as a petty offense, thus relieving congestion in the federal courts, maintaining the dignity of those tribunals, and making possible speedy disposition.

As things are now the cumbersome process of indictment must be resorted to even in the most petty case. The result is that large numbers of these cases pile up and have to be disposed of offhand by "bargain day" and similar unseemly processes. In any case which the district attorney elects to prosecute by indictment the judge will still have the discretion provided for in the existing law. If it is objected that a wide discretion is put in the district attorney by the proposed legislation the answer is that he has that discretion already in effect, simply exercising it, not in the beginning by the mode in which he prosecutes but later by including any particular prosecution in the wholesale disposition on some bargain day.

Thus, a few simple legislative enactments, in our opinion, could be made greatly to strengthen enforcement of the national prohibition law. Such measures, making it more adequate to its purposes, are suggested by study of material which has come to us from all agencies concerned with its administration. We think they could not in any wise interfere with any ultimate program which we may have to recommend and would in the meantime advance observance of the law.

Respectfully,

For the Commission,
GEO. W. WICKERSHAM,
Chairman.

Dated November 21, 1929.